Brief to be
furnished by Mr.
Sept. 1879.

Marlane

1879
10-49

Field J.

Oct 30. 1879

Elliott myself
affirming - myself
not voting.

TRANSCRIPT OF RECORD.

JPREME COURT OF THE UNITED STATES.

No. ~~141.~~ 23

CHARLES W. KIRTLAND, PLAINTIFF IN ERROR,

vs.

LEONARD L. HOTCHKISS.

IN ERROR TO THE SUPREME COURT OF ERRORS, LITCHFIELD COUNTY, STATE OF CONNECTICUT.

FILED SEPTEMBER 2, 1876.

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1 To the honorable John D. Park, of Norwich, in New London County, chief judge of the supreme court of errors, within and for the State of Connecticut:

The petition of Charles W. Kirtland, of Woodbury, in Litchfield County and State of Connecticut, humbly showeth that he is petitioner in the case of Charles W. Kirtland, petitioner, against Leonard L. Hotchkiss, respondent, which case has been passed upon by the supreme court of errors of the State of Connecticut, which said court is the highest court in said State having jurisdiction of the controversy in said case; that judgment has been rendered in favor of the respondent by said supreme court of errors; that said judgment is final; that the records of said proceedings and final judgment remain with the superior court and said supreme court of errors for said Litchfield County, State of Connecticut; that there was drawn in question in said case the validity of a statute of and an authority exercised under said State of Connecticut, on the ground of their being repugnant to the Constitution of the United States, and the decision of said court was in favor of such
2 their validity, against the claim of your petitioner and the right set up by him, to his great damage, and that a copy of the record in said case is attached to this petition.

Your petitioner therefore prays your honor to take his case into consideration, to allow to him a writ of error in said case to the next term of the Supreme Court of the United States, that the errors apparent upon the record may be reviewed and corrected by said court.

And as in duty bound your petitioner will pray.

Dated at Woodbury, the 6th day of July, 1876.

CHARLES W. KIRTLAND.

3 CHARLES W. KIRTLAND }
vs.
LEONARD L. HOTCHKISS. }

To the honorable superior court to be held at Litchfield, within and for the county of Litchfield, on the third Tuesday of September, 1873:

The petition of Charles W. Kirtland, of the town of Woodbury, in said Litchfield County, respectfully represents that he resides in and is a settled inhabitant of said town of Woodbury; that in the year 1869 he made and returned to the assessor of said town of Woodbury, in conformity to law, a correct list of all the real and personal property belonging to him, situated within this State, for the purposes of taxation.

And your petitioner avers that afterwards, on the 15th day of January, 1870, the board of relief of said town added to the petitioner's list of taxable property, so made and returned by him to the assessor as aforesaid, the sum of eighteen thousand dollars, and the said sum was included in his said list of taxable estate, and the several State, town, and school taxes for said town of Woodbury were pretended to be assessed by said town and its lawful officers upon the whole of said
4 consolidated list, including said added sum of eighteen thousand dollars.

And your petitioner avers that said list of his taxable estate so made and returned by him to said assessor as aforesaid contained all his real and personal estate liable to taxation in this State, and that he verified his said list by his oath before the proper officer; that the said list, according to the best of his knowledge, remembrance, or belief, was a true statement of all his property liable to taxation, and that he had not

conveyed or temporarily disposed of any estate for the purpose of evading the provisions of the act relating to taxation.

And your petitioner avers that said board of relief added said sum of eighteen thousand dollars to his said list without authority of law, against his mind and will, contrary to the principles of equity, and in a manner unjust, arbitrary, and oppressive to your petitioner, the said sum being falsely and unlawfully added to the total amount of all his taxable property within this State.

And the petitioner further avers that in the year 1870 he made and returned to the assessor of said town of Woodbury, in conformity to law, a correct list of all the real and personal property belonging to him situated within this State, for the purposes of taxation.

And your petitioner avers that afterwards, on the 16th day of
5 January, 1871, the board of relief of said town of Woodbury added to the petitioner's list of taxable property, so made and returned by him to the assessor as aforesaid, the sum of twenty thousand dollars, and the said sum was included in his said list of taxable estate, and the several State, town, and school taxes for said town of Woodbury were pretended to be assessed by said town and its lawful officers upon the whole of said consolidated list, including said illegally added sum of twenty thousand dollars.

And your petitioner avers that said list of his taxable estate, so made and returned by him to said assessor as aforesaid, contained all his personal and real estate liable to taxation within this State, and that he verified his said list by his oath before the proper officer; that the said list, according to the best of his knowledge, remembrance, or belief, was a true statement of all his property liable to taxation, and that he had not conveyed or temporarily disposed of any estate for the purpose of evading the provisions of the act relating to taxation.

And your petitioner avers that said board of relief added said sum of twenty thousand dollars to his said list without authority of law, against his mind and will, contrary to the principles of equity, and in a manner unjust, arbitrary, and oppressive to your petitioner, the said sum being falsely and unlawfully added to the total amount of all his taxable property within this State.

6 And your petitioner avers that on the 11th day of April, 1870, he paid to the collector of taxes for said town of Woodbury the whole amount due to him as such collector upon the entire amount of said list for taxes for the year 1869, made out by the petitioner and *and* returned by said assessor as aforesaid to the town-clerk's office, but did not pay to him any tax laid upon said illegally added sum of eighteen thousand dollars.

And your petitioner avers that on the 10th day of April, 1871, he paid to the collector of taxes for said town of Woodbury the whole amount due to him as such collector upon the entire amount of his said list for the year 1870, as made out by the petitioner and returned by the assessor to the town-clerk's office, as aforesaid, but did not pay to him any tax laid upon said illegally added sum of twenty thousand dollars.

And your petitioner avers that Leonard L. Hotchkiss, of said Woodbury, as collector of taxes for said town, and as collector of the taxes pretended to be laid by said town on said illegally added sums in said lists for the years 1869 and 1870, on the 1st day of April, 1873, demanded the sum of four hundred and forty-five dollars as the amount due from said petitioner to pay the pretended taxes upon said illegally added sums in the lists for the years 1869 and 1870, which the petitioner refused to pay. And the said Hotchkiss thereafter, on the 2d

and the same shall be designated and cited as The Revised Statutes of the United States."

This clear and explicit declaration precludes the idea that the act embodying the Revised Statutes was intended as legislation on the various subjects included in it. Prima facie, then, we are not justified in expecting to find there changes of previous laws.

Nevertheless, it is quite certain that the Revised Statutes do contain such changes, and wherever they appear so clearly as to rebut the contrary presumption raised by section 5595, no court has authority to disregard them.

But when in any chapter, or in any section, the phraseology, or the arrangement of clauses or words, or both, differ from the previous laws on the same subject, and it is doubtful whether Congress intended by changing the phraseology or the arrangement, or both, to make a different law from that before existing, then it is the function of the judiciary, in a case properly presented, to declare what was the intention of Congress. This case is one calling for the exercise by this court of that function.

The claimant became a member of the Soldiers' Home after the passage of the act of June 22, 1874; and his rights, as such, are therefore to be determined mainly by the portion of the Revised Statutes embraced in chapter two of Title LIX, including sections 4814–4824; the question in controversy being more directly connected with section 4820.

Unless the provisions of that chapter changed the previous law, the claimant has no case. To determine that question we must, in the outset, see how that law stood.

By section 1 of the act of March 3, 1851 (9 Stat. L., 595), authorizing the establishment of the Soldiers' Home, it was required that all members of the Home should have contributed to its funds, according to section 7 of the same act, which authorized twenty-five cents per month to be deducted for that purpose from every soldier's pay. This was, by section 7 of the act of March 3, 1859 (11 Stat. L., 431), reduced to twelve and a half cents per month.

By section 4 of the act of 1851 the classes of persons who should be entitled to the rights and benefits of membership in the Home were designated, as follows:

"1. Every soldier of the Army of the United States who shall have served, or may serve, honestly and faithfully, twenty years in the same."

This referred only to soldiers of the regular Army.

"2. Every soldier, and every discharged soldier, whether regular or volunteer, who shall have suffered by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability has not been occasioned by his own misconduct."

This specification would, of course, include pensioners for "disease or wounds incurred in the service and in the line of duty."

By the operation of section 1, requiring previous contribution to the funds of the Home by all who became members of it, no pensioner who had not contributed to those funds could become a member. This excluded all soldiers pensioned before the act of 1851 was passed; for they could not possibly have contributed to funds which had no existence until after that act took effect.

12 To prevent this exclusion this proviso of section 5 of that act was inserted:

"Provided, That any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided, upon transferring his pension to said asylum for and during the period that he may voluntarily continue to receive such benefits."

The result of these two provisions was, as regards pensioners, to divide them into two classes, those pensioned before and those pensioned after the act of 1851. The former were required to surrender their pensions on entering the Home; the latter were not. The unjust and unfortunate character of this discrimination could not, in the nature of things, practically appear until the lapse of sufficient time after the passage of the act for soldiers to become disabled by disease or wounds incurred after that time; all of whom would necessarily have contributed to the funds, and therefore could not have been required to surrender their pensions. When such began to enter the Home, the unjust character of the law was practically displayed, in requiring one who had been pensioned before the act of 1851 to make his contribution to the funds by giving up his pension; while one pensioned after that act, and who had, out of his pay, contributed even no more than a single payment of 25 cents, could have all the benefits of the Home, and keep his pension besides.

This condition of things evidently required a corrective, which was applied by section 6 of the above-mentioned act of March 3, 1859, as follows:

"All pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution for and during the time they may remain therein and voluntarily continue to receive its benefits."

After this enactment no pensioner could enter the Home without surrendering his pension; and so stood the law up to the time of the Revised Statutes. Did the Revised Statutes change that law? The claimant contends that they did; the defendants insist that they did not.

Before looking to the particular section of the revision by which the decision of this question must principally be affected, I will advert to some doctrines bearing on the interpretation of statutory revisions, which I consider sound.

It has been held in several States that when the law antecedently to a revision was settled, either by clear expressions in the statutes or adjudications on them, the mere change of phraseology in the revised act shall not be deemed a change of the law, unless such phraseology evidently purports, and palpably requires the courts to hold, an intention in the legislature to work a change. (Taylor vs. Delaney, 2 Caines' Cases, 143; Yates' Case, 4 Johnson, 317, 359; Mooers vs. Bunker, 9 Foster, 420; Burnham vs. Stevens, 33 New Hamp., 247; Ash vs. Ash, 9 Ohio State, 383; Van Camp vs. Board of Education, Ibid., 406; Conger vs. Barker, 11 Ibid., 1; Croswell vs. Crane, 7 Barbour, 191.)

2. Where a section in a revision was intended as a substantial re-enactment of three sections of a previous act, it was held, in Kentucky, that neither the mere change of phraseology, nor the fact that the substance of three sections was embodied in one, authorized the inference that any radical modification of the law itself was intended. (Overfield vs. Sutton, 1 Metcalfe, 621.)

3. When the general laws of a State were in the shape of a code, and a revision thereof was had, which separated the various provisions, and transposed and distributed them under different heads, in different statutes, it was held, in Wisconsin, that this change of arrangement
13 furnished no evidence that the legislature intended to limit or

change the application (Buckstaff vs. Hanville, 14 Wisconsin, 77); and that the scattered provisions were to receive the same interpretation as when the Code constituted one act. (Smith vs. Smith, 19 Wisconsin, 522.)

4. It was held by the supreme court of New York, Cowen, J., delivering the opinion, that in ascertaining the intent of the legislature in a revision of statutes, the court might look to the marginal notes of the revisers for aid. (Douglas vs. Howland, 24 Wendell, 35, 46.)

These rulings seem to me to cover the main points in regard to the interpretation of revisions of statutes, and to be entitled to great weight. Guided by them, in connection with section 5595, I proceed to inquire whether the Revised Statutes do in fact change the previous law in relation to surrenders of pensions by members of the Home.

As before shown, section 6 of the act of 1859 required all pensioners to surrender their pensions on entering the Home.

The claimant contends that that provision is not to be found in the revision; but a different one, in section 4820, which in effect sets aside section 6 of the act of 1859, and reinstates the provisions of the act of 1851, the unjust character of which has been shown. Section 4820 is as follows:

"The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

Did Congress intend in this section to legislate, or merely to embody existing law? In deciding that point, the words should be studied, not by themselves, nor merely in connection with the other provisions of that chapter, but in connection with the whole act promulgating the revision; and hence the influence of section 5595 in their interpretation.

Upon examining that chapter I find that it embodies all the provisions of the acts of 1851 and 1859, except one of a temporary character, and another not bearing on this case, which had probably been previously repealed. And all those provisions are retained in the revision, in large part, in the very words of those acts. The only instance in which such a change in phraseology and arrangement was made, as fairly to admit of question as to the intent of Congress, is section 4820.

From the results of that examination, taken in connection with the general terms of section 5595, I am led to the general conclusion that, prima facie, Congress did not, in that chapter, intend to legislate in regard to the Home, but merely to revise and consolidate existing laws.

But yet it may be that Congress did intend to legislate; and in order to consider that question properly I must, in direct connection, again quote section 4820:

"The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

It is claimed that the word "such," in the second sentence there, confines the operation of that sentence to pensioners who had not contributed out of their pay to the funds of the home; and that, as the claimant had so contributed, he is not required to surrender his pension.

In considering this position the point is, whether either of the two

clauses of that section is new matter; or whether the section is
14 made up of parts of previous laws. If the former, it is legislation; if the latter, it is only revision and consolidation. That the two sentences are of the latter description I have not a doubt; for I have examined the draft of the revision by the commissioners, as reported by them to Congress, and find that opposite section 4820, in the margin, are references to section 5 of the act of 1851, and section 6 of the act of 1859, as the places from which the two sentences of section 4820 were taken. But much higher and more conclusive evidence of the intention of Congress is afforded by a comparison of section 5 of the act of 1851 with the first sentence of section 4820; and of section 6 of the act of 1859 with the second sentence of that section.

In the first comparison the provisions stand as follows:

Section 5 of act of 1851: "Any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided."

First sentence of section 4820: "The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto."

I am entirely unable to discover any difference between those provisions, except in phraseology. In my view, they both mean the very same thing.

Comparing section 6 of the act of 1859 with the second sentence of section 4820, they stand as follows:

Section 6 of act of 1859: "All pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution for and during the time they may remain therein and voluntarily continue to receive its benefits."

Second sentence of section 4820: "But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

Between these two provisions I am equally unable to discern any shade of difference, except that made by the insertion of the word "such." To my mind, then, it is clear that section 4820 was made up of those two provisions from the acts of 1851 and 1859, of which it would have been a complete reproduction but for the insertion of that one word. Does that insertion change the meaning, and thereby show an intention in the commissioners and in Congress to change the law? I think not, on the following grounds:

1. In my opinion the whole difficulty grows out of an inadvertence of the commissioners in their effort to combine in one section two separate provisions taken from two several acts; and the inadvertence consisted in placing the provisions together in the chronological order of their original enactment, instead of giving them in an order which would unmistakably have retained the law as it was. Transpose the sentences and leave out the words "but" and "such," and the section would read thus:

"All pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits. The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home, shall not preclude him from admission thereto."

So framed, it would exactly embody and express the previous law.

But is it an admissible mode of finding legislative intention thus to transpose sentences? I think it is. The real question is not whether it is arranged in the most perspicuous and convenient way, but whether the previous law is so clearly retained in the revision that, notwithstanding the changed arrangement of sentences, it can fairly and legitimately be seen to be in reality the same. Careless, unskillful, unsystematic, and illogical arrangements of sections, clauses, sentences, and words, in American statutes, are too prevalent to be allowed to defeat the manifest intention of the legislature. If, as in this case, one arrangement of sentences in a section of the revision would seem to indicate an intention to change the previous law, while another arrangement makes it quite clear that a change was not intended, I have no doubt that the latter should be adopted; for it coincides with the judicial presumption that a revision is intended to embody the existing law; and also fulfills the express declaration of section 5595, that the Revised Statutes "embrace the statutes * * * in force on the 1st day of December, 1873."

2. Other considerations tend to the same conclusion, and are proper to be adduced, as aiding the judicial mind to discover the intention of Congress in making and promulgating the revision. The question properly and quite inevitably arises, Why should Congress, out of all the provisions of the acts of 1851 and 1859, have selected this particular one for a change? Can it be justly claimed that the act of 1859, requiring all pensioners to surrender their pensions, worked an injustice or hardship which appealed to Congress for relief? I have heard no such claim. On the contrary, it is clear to me that the act of 1851 perpetrated a gross injustice (afterward removed by the act of 1859) when it took away his pension from an old and perhaps totally disabled pensioner, because he had not contributed what he had not had the opportunity to contribute, and allowed a young and only partially-disabled pensioner to have all the benefits of the Home, and keep his pension besides, merely because he had contributed 12½ cents, or, as in the case of this claimant, $4.57 out of his pay to the funds of the Home.

Of course I understand that this view should not necessarily control the interpretation of plain and clear words; but when the question is not as to the meaning of certain words in an act of original legislation, but whether it was the intention of Congress, by the use of those words in a revision, to reinstate on the statute-book a former system which, more than fifteen years before, it had, by amendatory law, condemned and cast out, then the unjust character of that system affords ground for presuming that Congress did not intend to return to it.

The conclusion that they did not so intend is enforced by the consideration that neither the commissioners nor Congress, if they in fact intended to make a change, would probably have attempted it by the mere interpolation of a word of reference, but would have expressed their intention in direct and plain terms.

The conclusion at which I have thus arrived is attainable, also, by an examination of the text of section 4820; in regard to which I am satisfied with the views expressed by the Attorney-General in his opinion given to the Secretary of the Interior, as follows:

"But the same conclusion is reached by a more strictly grammatical interpretation of section 4820. Thus the words 'all such pensioners,' in the second sentence of that section, may be taken to refer to all pensioners who come within the words of description used in the preceding sentence, namely, 'One to whom a pension has been granted for wounds or disability received in the military service.' The 'fact' mentioned in

such preceding sentence, that 'he has not contributed to the funds,' is not descriptive of the pensioner, but of a circumstance or condition which may or may not be affirmed of the pension already described.

"Had the design been to limit the application of the second sentence to a pensioner who has not contributed, the legislature, instead of saying, 'but all such pensioners shall surrender their pension,' &c., would probably have said, 'but in such case the pensioner shall surrender his pension,' &c., or have employed some equivalent expression referring to the circumstance or condition above mentioned, as well as to the pensioner."

But even supposing that the letter of section 4820 can be forced into the construction placed upon it by the court, the question then is whether that construction shall prevail against the clearly expressed intent of Congress to embody in the revision the law as it previously stood.

16 A sound principle in statutory construction is thus formulated by high judicial authority, that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. (People vs. Utica Ins. Co., 15 Johnson, 358, 381; Jackson vs. Collins, 3 Cowen, 39; Canal Co. vs. Railroad Co., 4 Gill & Johnson, 1.) And in Vermont I find a case which so clearly, sensibly, and ably supports the second clause of that formula, and is so apposite to the present discussion, that I present the following extracts from the opinion of the court:

"It is urged that when the language of a statute is plain, clear, and intelligible, it is itself the best, and should be the only, expositor of the meaning of the legislature. Theoretically, the argument would seem to furnish a safe rule of interpretation; practically, it is not always safe or sensible. A rigid adherence to it would not unfrequently involve us in contradictions, absurdities, and palpable violations of the real intention of the legislature. The ignorance and inexperience of some legislators; the inability of even the wisest to foresee all the bearings and connections of an act; the great number of statutes proposed for enactment, and the variety of minds that modify and amend them; the haste of legislation; the imperfection of language, and want of skill, accuracy, and perspicuity in the use of it; and, not unfrequently, want of accuracy and clearness of ideas; these all contribute to produce errors, imperfections, and inconsistencies in the phraseology of statutes. Hence, the letter of the law is found by experience not to be in all cases a correct guide of the true sense of the lawgiver; hence have arisen those rules for the construction of statutes which look to the whole and every part of a statute, and the apparent intention derived from the whole, to the subject-matter, to the effects and consequences, and to the reason and spirit of the law; and thus ascertain the true meaning of the legislature, though the meaning so ascertained conflict with the literal sense of the words. * * * Illustrations and authorities are unnecessary to sustain a principle so well settled. We may, however, refer to one derived from an old book, which, in its treatise on this subject, Judge Story calls 'an excellent summary of the rules for construing statutes,' and which for its sense and point is worthy of attention."

"In some cases, the letter of an act of Parliament is restrained by an equitable construction; in others, it is enlarged; in others, the construction is contrary to the letter. In order to form a right judgment

whether a case be within the equity of a statute, it is a good way to suppose the lawmaker present, and that you have asked him this question: Did you intend to comprehend this case? Then you must give yourself such answer as you imagine he, being an upright and reasonable man, would have given. If this be, that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute, for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto." (Bacon's Abridgment, Title Statutes.)

"Applying this rule to the case at bar, we think all must agree that if the lawmaker were present, and so interrogated, he would answer that he did not intend to comprehend it within this statute. To hold to the contrary would attribute to this section a meaning repugnant to the whole spirit and reason of the statute, in direct conflict with other sections of the act, and with the very basis of all our legislation on the subject." (Ryegate vs. Wardsboro, 30 Vermont, 746.)

Influenced by these views, the supreme court of Vermont decided that the law before them did not mean what its words plainly imported.

Many other cases might be cited where courts have given a meaning to a statute directly contrary to its letter; but there is no need to cumber this already long opinion by their citation. Suffice it to say that the letter of section 4820, construed as the claimant desires, is contrary to the spirit and intent of Congress in the Revised Statutes, as expressed in section 5595, and rests upon a narrow and strained interpretation, which seems to me to stick in the bark and not to reach the core of the question.

In every light in which I have been able to view the subject, my unhesitating conclusion is, that Congress intended the law applicable to this case to remain in statu quo, and it does in fact so remain; and therefore that the claimant has no right to recover the amount of his pension-money which has, during his membership in the Soldiers' Home, been paid over to that institution.

17 VI.—*Final judgment.*

At a Court of Claims held at the Capitol in the city of Washington on the 17th day of March, A. D. 1879, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Charles Bowen, claimant, do have and recover of and from the United States the sum of two hundred and sixty-four dollars and sixty cents.

18 VII.—*Application for appeal and order allowing same.*

From the judgment rendered in the above-entitled cause on 17th March, 1879, in favor of claimant, the defendants, by their Attorney-General, on the 9th day of April, 1879, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Attorney-General.

A. D. R.

Filed April 9th, 1879.

And now, to wit, April 9, 1879, it is ordered that the appeal be allowed as prayed for.

19 In the Court of Claims.

CHARLES BOWEN
vs.
THE UNITED STATES. } No. 11913.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the Court, of the dissenting opinion, of the final judgment of the court, of the application by the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this sixteenth day of September, 1879.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 875. The United States, appellants, vs. Charles Bowen. Court of Claims. Filed 3rd October, 1879.